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EP/EO:T

JAN 03 1990

[REDACTED]  
CERTIFIED MAIL

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax under section 501(c)(3) of the Internal Revenue Code.

The information submitted indicates that you were incorporated under the non-profit corporation laws of the [REDACTED] on [REDACTED]. In your Articles of Incorporation, you state that your objectives and purpose are "to serve in an exclusive charitable and educational capacity as provided under Section 501(c)(3) of the United States Internal Revenue Code."


Your articles also state that "In furtherance of its charitable and educational purposes, the corporation shall conduct the following activities: Encourage, promote and stimulate the community development of human resources through education of youths which programs will demonstrate promise of concrete progress toward elimination of poverty and the cause and causes of poverty." Your means to accomplish these ends shall include the following activities:

- 1) Accept grants for the purpose of conducting programs for the furtherance of the above purposes.
- 2) Provide a learning experience for children ages three years through twelve years old.

You are not a membership organization per your application but your Bylaws provide for eight types of membership based on the amount of contributions.

In your Bylaws you stated the following objectives:

- 1) Provide a natural learning and living environment where children can develop according to their own ability and rate of comprehension.
- 2) Change negative behavior patterns into positive ones so that children are calm but not complacent.

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- 3) Eliminate destructive competitiveness and egotism between children by developing individual learning processes and reinforcing the belief that each child is worthy and part of a larger collective.
  - 4) Equip children with tools to analyze all sides of any question or issue before arriving at any conclusion.
  - 5) Encourage children to think and act independently and solve their own problems and make decisions.
  - 6) Aid children to develop positive nutritional, sexual, and wholistic health attitudes for their complete physical, emotional and mental development.
  - 7) Show cultural, racial and class differences among children that would aid in each child's growth and experience as an ethnic majority/minority.

Your activities consist of providing an educational alternative to the regular school program. You maintain a regular faculty and curriculum. Your hours of operation are Monday through Friday, from 9 a.m. until 3 p.m. Students attend different days depending upon individual need. Weekly packets of academic work are assigned to each student based on their level of achievement. Home visitations are also made.

The number of teachers and volunteers vary seasonally based on enrollment. You presently have three teachers and four tutors volunteering their services.

Your Director's home has housed the program since its inception. It consists of one large living room, one large dining room, four bedrooms, one large den, two bathrooms and a kitchen.

Your Director's personal automobile is used to transport students from a central location on the island to the program site as well as for weekly educational field trips and home visitations.

Your expenditures are for rent, transportation, utilities, phone, postage, office supplies, and teaching aids and supplies.

In response to our inquiry regarding the fact that your budgets reflect an amount for rent that is almost equal to the monthly rental on your Director's personal residence, you stated that "Everything in the house is used for the program with the exception of one bedroom and one bath." You did not provide a lease or any other type of agreement to show how you arrived at the fair rental value of the space in question other than the lease of the Director's personal residence.

The automobile expense includes the purchase of the Director's personal automobile as evidenced by the copy of the purchase contract submitted.

When questioned about your method of allocating expenses between business use and personal use, you stated: "My life is committed to helping children learn and more days than not I do not go to bed until two in the morning and am up at 6 a.m. seeing that this program runs smoothly. I do not know how you would equate that in dollars and cents."

In your application, you stated that your sources of financial support would include tutorial fees, donations from contributors and grants. However, in response to our questionnaire, you stated that "Unfortunately the majority of the parents we are working with are unable to pay fees. So we have been unable to fix fees. For this reason we have had to depend solely on donations and contributions."

Section 501(c)(3) of the Internal Revenue Code provides for exemption from federal income tax for organizations which are organized and operated exclusively for religious, charitable, or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(d)(1)(ii) of the Income Tax Regulations states that an organization is not operated exclusively for section 501(c)(3) purposes unless it serves a public rather than private interest. Thus, to qualify under section 501(c)(3), an organization must establish that it is not organized or operated for the benefit of private interests such as designated individuals, or persons controlled directly or indirectly by such private interests. An organization's officers, members, founders, or contributors may not, by reason of their position, receive direct or indirect benefit from its funds other than as reasonable payment for goods or services.

The Supreme Court has held that the presence of a single non-charitable purpose or activity, if substantial in nature, will preclude exemption under section 501(c)(3) of the Code regardless of the number or importance of truly charitable purposes or activities. Better Business Bureau of Washington, D.C. v. United States, 326 U.S. 279 (1945) C.B. 375.

Based on the information submitted, the funds of the organization have been used to personally benefit the Director of the organization. The budgeted earnings of the organization will be used to pay all of the rent on the Director's personal residence, along with the utilities and telephone expense. In addition, the earnings will also pay for the purchase and maintenance of the Director's personal automobile.

Therefore, we conclude that you are not organized and operated exclusively for exempt purposes described in section 501(c)(3) of the Code. Although many of your activities further educational and charitable purposes, the use of the organization's income to pay for the household and transportation expenses of the founder/director constitutes inurement which is prohibited within the meaning of section 501(c)(3). We therefore cannot conclude that only an insubstantial part of your activities are in furtherance of nonexempt purposes. Better Business Bureau of Washington, D.C. v. United States, 326, U.S. 279 (1945), 945 C.B. 375.

Accordingly, you are not exempt from federal income tax returns under section 501(c)(3) and contributions to you are not deductible under section 170 of the Code. You are required to file federal income tax returns.

If you do not agree with our determination, you may request consideration of this matter by the Office of Regional Director of Appeals. To do this, you should file a written appeal as explained in the enclosed Publication 892. Your appeal should give the facts, law and any other information to support your position. If you want a hearing, please request it when you file your appeal and you will be contacted to arrange a date. The hearing may be held at the regional office, or, if you request, at any mutually convenient district office. If you will be represented by someone who is not one of your principal officers, that person will need to file a power of attorney or tax information authorization with us.

If you do not appeal this determination within 30 days from the date of this letter, as explained in the enclosed Publication 892, this will become our final determination on this matter. In accordance with section 6104(c) of the Code, we are notifying the appropriate state officials of this determination. Further, if you do not appeal this determination within the time provided, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) provides, in part, that, "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

Sincerely yours,

  
  
District Director

Enclosure: Publication 892